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# MARTIN'S ANNUAL CRIMINAL CODE 2012

## CUMULATIVE SUPPLEMENT

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### TABLE OF CONTENTS

<i>Criminal Code</i> .....	3
<i>Offence Grid</i> .....	25
<i>Forms of Charges</i> .....	25
<i>Controlled Drugs and Substances Act</i> .....	26
<i>Youth Criminal Justice Act</i> .....	31

**CANADA LAW BOOK®**

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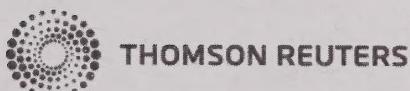
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**A cataloguing record for this publication is available from Library and Archives Canada**

ISBN: 978-0-88804-541-6; 978-0-888-04-542-3 (judicial);

978-0-88804-543-0 (police); 978-0-88804-544-7 (student)



**CANADA LAW BOOK, A DIVISION OF THOMSON REUTERS CANADA LIMITED**

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Toronto, Ontario  
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# **CRIMINAL CODE**

**The *Criminal Code* has been amended by the following, all of which appear under grey screening in *Martin's Annual Criminal Code, 2012*:**

Amended 2010, c. 19, s. 1; brought into force November 30, 2011 by SI/2011-99, *Can. Gaz., Part II*, December 7, 2011

Amended 2011, c. 2, ss. 2 to 5; brought into force December 2, 2011 by SI/2011-108, *Can. Gaz., Part II*, December 21, 2011

Amended 2011, c. 5, ss. 2 to 5; brought into force December 2, 2011 by SI/2011-107, *Can. Gaz., Part II*, December 21, 2011

Amended 2011, c. 6, ss. 2 to 5; brought into force November 1, 2011 by SI/2011-82, *Can. Gaz., Part II*, October 12, 2011

## **Included in this supplement are the following amendments:**

Amended 2011, c. 16, ss. 2, 4 to 16; ss. 2, 4 to 6, 7(2) and (4), 10, 11 and 14 to 16 brought into force August 15, 2011 by SI/2011-62, *Can. Gaz., Part II*, August 17, 2011; remainder brought into force October 24, 2011 by SI/2011-62, *Can. Gaz., Part II*, August 17, 2011

Amended 2012, c. 1, ss. 10 to 22(2), 23 to 38, 47, 141(2) and (3), 142 to 147, 200; s. 32(2), 141(2) and (3), 142 to 146 in force on Royal Assent, March 13, 2012; remainder to come into force by order of the Governor in Council

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## **Section 7**

Subsection 7(4.1) amended by replacing "171" with "171, 171.1, 172.1, 172.2", 2012, c. 1, s. 10.

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## **Section 151**

Paragraphs 151(a) and (b) replaced, 2012, c. 1, s. 11

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or
- (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

## **Section 152**

Paragraphs 152(a) and (b) replaced, 2012, c. 1, s. 12

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or
  - (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.
- 

## **Section 153**

Paragraphs 153(1.1)(a) and (b) replaced, 2012, c. 1, s. 13

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or
  - (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.
- 

## **Section 155**

Subsection 155(2) replaced, 2012, c. 1, s. 14

### Punishment

(2) Everyone who commits incest is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and, if the other person is under the age of 16 years, to a minimum punishment of imprisonment for a term of five years.

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## **Section 160**

Subsection 160(3) replaced, 2012, c. 1, s. 15

### Bestiality in presence of or by child

(3) Despite subsection (1), every person who commits bestiality in the presence of a person under the age of 16 years, or who incites a person under the age of 16 years to commit bestiality,

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or
- (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

## **Section 161**

1. Subsection 161(1) amended by striking out "or" at the end of para. (b) and by replacing para. (c), 2012, c. 1, s. 16(1)

- (c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or
- (d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.

2. Paragraph 161(1.1)(a) amended by replacing, 2012, c. 1, s. 16(2)

- (a) "171 or 172.1" with "171, 171.1, 172.1 or 172.2";
- (b) "173(2)" with "173(2) or 212(1), (2), (2.1) or (4)"; and
- (c) "273 or 281" with "273, 280 or 281".

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## **Section 163.1**

1. Paragraph 163.1(2)(b) replaced, 2012, c. 1, s. 17(1)

- (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding two years less a day and to a minimum punishment of imprisonment for a term of six months.

2. Paragraph 163.1(3)(b) replaced, 2012, c. 1, s. 17(2)

- (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding two years less a day and to a minimum punishment of imprisonment for a term of six months.

3. Paragraphs 163.1(4)(a) and (b) replaced, 2012, c. 1, s. 17(3)

- (a) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

4. Paragraphs 163.1(4.1)(a) and (b) replaced, 2012, c. 1, s. 17(4)

- (a) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

## **Section 164.2**

The portion of subsec. 164.2(1) before para. (a) replaced, 2012, c. 1, s. 18

### Forfeiture after conviction

164.2 (1) On application of the Attorney General, a court that convicts a person of an offence under section 163.1, 172.1 or 172.2, in addition to any other punishment that it may impose, may order that anything — other than real property — be forfeited to Her Majesty and disposed of as the Attorney General directs if it is satisfied, on a balance of probabilities, that the thing

## **Section 170**

Paragraphs 170(a) and (b) replaced, 2012, c. 1, s. 19

- (a) to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year if the person procured is under the age of 16 years; or
- (b) to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months if the person procured is 16 years of age or more but under the age of 18 years.

## **Section 171**

Paragraph 171(b) replaced, 2012, c. 1, s. 20

- (b) to imprisonment for a term not exceeding two years and to a minimum punishment of imprisonment for a term of 90 days if the person is 16 years of age or more but under the age of 18 years.

## **Section 171.1**

Section 171.1 enacted, 2012, c. 1, s. 21

### MAKING SEXUALLY EXPLICIT MATERIAL AVAILABLE TO CHILD / Punishment / Presumption / No defence / Definition of "sexually explicit material".

171.1 (1) Every person commits an offence who transmits, makes available, distributes or sells sexually explicit material to

- (a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to that person;
- (b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

- (c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.
- (2) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years and to a minimum punishment of imprisonment for a term of 90 days; or
  - (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months and to a minimum punishment of imprisonment for a term of 30 days.
- (3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of 18, 16 or 14 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.
- (4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least 18, 16 or 14 years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.
- (5) In subsection (1), "sexually explicit material" means material that is not child pornography, as defined in subsection 163.1(1), and that is
- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
    - (i) that shows a person who is engaged in or is depicted as engaged in explicit sexual activity, or
    - (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a person's genital organs or anal region or, if the person is female, her breasts;
  - (b) written material whose dominant characteristic is the description, for a sexual purpose, of explicit sexual activity with a person; or
  - (c) an audio recording whose dominant characteristic is the description, presentation or representation, for a sexual purpose, of explicit sexual activity with a person.

## Section 172.1

1. The portion of subsec. 172.1(1) before para. (c) replaced, 2012, c. 1, s. 22(1)

### Luring a child

172.1 (1) Every person commits an offence who, by a means of telecommunication, communicates with

- (a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to that person;

- (b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

2. Subsection 172.1(2) replaced, 2012, c. 1, s. 22(2)

#### Punishment

- (2) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or
  - (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

## Section 172.2

Section 172.2 enacted, 2012, c. 1, s. 23

#### AGREEMENT OR ARRANGEMENT — SEXUAL OFFENCE AGAINST CHILD / Punishment / Presumption / No defence / No defence.

172.2 (1) Every person commits an offence who, by a means of telecommunication, agrees with a person, or makes an arrangement with a person, to commit an offence

- (a) under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to another person who is, or who the accused believes is, under the age of 18 years;
- (b) under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to another person who is, or who the accused believes is, under the age of 16 years; or
- (c) under section 281 with respect to another person who is, or who the accused believes is, under the age of 14 years.

(2) Every person who commits an offence under subsection (1)

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or
- (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

(3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of 18, 16 or 14 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

(4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least 18, 16 or 14 years of

age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.

(5) It is not a defence to a charge under paragraph (1)(a), (b) or (c)

- (a) that the person with whom the accused agreed or made an arrangement was a peace officer or a person acting under the direction of a peace officer; or
- (b) that, if the person with whom the accused agreed or made an arrangement was a peace officer or a person acting under the direction of a peace officer, the person referred to in paragraph (1)(a), (b) or (c) did not exist.

## Section 173

Section 173 replaced, 2012, c. 1, s. 23

### INDECENT ACTS / Exposure.

173. (1) Everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person,

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years; or
- (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months.

(2) Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 16 years

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years and to a minimum punishment of imprisonment for a term of 90 days; or
- (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months and to a minimum punishment of imprisonment for a term of 30 days.

## Section 183

Paragraph (a) of the definition "offence" in s. 183 amended by adding the following after subpara. (xxix), 2012, c. 1, s. 24

- (xxix.1) section 170 (parent or guardian procuring sexual activity),
- (xxix.2) section 171 (householder permitting sexual activity),
- (xxix.3) section 171.1 (making sexually explicit material available to child),
- (xxix.4) section 172.1 (luring a child),
- (xxix.5) section 172.2 (agreement or arrangement — sexual offence against child),

## Section 271

Section 271 replaced, 2012, c. 1, s. 25

## **SEXUAL ASSAULT**

271. Everyone who commits a sexual assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding 10 years and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of one year; or
  - (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding 18 months and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of 90 days.
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## **Section 272**

Subsection 272(2) amended by striking out "and" at the end of para. (a.1) and by enacting para. (a.2), 2012, c. 1, s. 26

- (a.2) if the complainant is under the age of 16 years, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of five years; and
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## **Section 273**

Subsection 273(2) amended by striking out "and" at the end of para. (a.1) and by enacting para. (a.2), 2012, c. 1, s. 27

- (a.2) if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and
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## **Section 486**

Subsection 486(3) amended by replacing "171, 172, 172.1" with "170, 171, 171.1, 172, 172.1, 172.2", 2012, c. 1, s. 28.

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## **Section 486.4**

Subparagraph 486.4(1)(a)(i) amended, 2012, c. 1, s. 29, by replacing

- (a) "171, 172, 172.1" with "171, 171.1, 172, 172.1, 172.2"; and
  - (b) "279.03" with "279.03, 280, 281".
- 

## **Section 487.04**

Subparagraph (a)(i.91) of the definition "primary designated offence" replaced, 2012, c. 1, s. 30

- (i.901) section 171.1 (making sexually explicit material available to child),
- (i.91) section 172.1 (luring a child),
- (i.911) section 172.2 (agreement or arrangement — sexual offence against child),

## **Section 490.011**

1. Subparagraph (a)(x) of the definition "designated offence" replaced, 2012, c. 1, s. 31
  - (ix.1) section 171.1 (making sexually explicit material available to child),
  - (x) section 172.1 (luring a child),
  - (x.1) section 172.2 (agreement or arrangement — sexual offence against child).
2. The definition "pardon" in subsec. (1) replaced, 2012, c. 1, s. 141(2)  
**"pardon"**  
"pardon" means a conditional pardon granted under Her Majesty's royal prerogative of mercy or under section 748 that has not been revoked.
3. Subsection 490.011(1) amended by enacting the following definition in alphabetical order, 2012, c. 1, s. 141(3)  
**"record suspension"**  
"record suspension" means a record suspension, as defined in subsection 2(1) of the *Criminal Records Act*, that has not been revoked or ceased to have effect.

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## **Section 490.015**

1. Subsection 490.015(3) replaced, 2012, c. 1, s. 142(1)

### **Pardon or record suspension**

**(3) Despite subsections (1) and (2), a person may apply for a termination order once they receive a pardon or once a record suspension is ordered.**

2. Subsection 490.015(5) replaced, 2012, c. 1, s. 142(2)

### **Re-application**

**(5) A person whose application is refused may re-apply if five years have elapsed since they made the previous application. They may also re-apply once they receive a pardon or once a record suspension is ordered. However, they may not re-apply under this subsection if an order is made with respect to them under section 490.012 of this Act or section 227.01 of the *National Defence Act* after the previous application was made.**

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## **Section 490.022**

- Paragraph 490.022(2)(c) replaced, 2012, c. 1, s. 143

**(c) the day on which a person referred to in paragraph 490.02(1)(b) provides satisfactory proof of a pardon or record suspension to a person who collects information, as defined in subsection 3(1) of the *Sex Offender Information Registration Act*, at a registration centre.**

## **Section 490.026**

Subsections 490.026(4) and (5) replaced, 2012, c. 1, s. 144

### **Pardon or record suspension**

(4) Despite subsections (2) and (3), a person may apply for a termination order once they receive a pardon or once a record suspension is ordered.

### **Re-application**

(5) A person whose application is refused may apply again if five years have elapsed since they made the previous application. They may also apply again once they receive a pardon or once a record suspension is ordered. However, they may not apply again if, after the previous application was made, they become subject to an obligation under section 490.02901, under section 227.06 of the *National Defence Act* or under section 36.1 of the *International Transfer of Offenders Act* or to an order under section 490.012 or under section 227.01 of the *National Defence Act*.

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## **Section 515**

1. 2003, c. 8, s. 8 (*An Act to amend the Criminal Code (firearms) and the Firearms Act*, which was to replace s. 515(4.1)(c), repealed, 2012, c. 1, s. 47)

2. Paragraph 515(4.1)(c) replaced, 2012, c. 1, s. 32(1)

(c) an offence relating to the contravention of any of sections 5 to 7 of the *Controlled Drugs and Substances Act*,

3. Paragraph 515(6)(d) replaced, 2012, c. 1, s. 32(2)

(d) with having committed an offence punishable by imprisonment for life under any of sections 5 to 7 of the *Controlled Drugs and Substances Act* or the offence of conspiring to commit such an offence.

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## **Section 523**

1. Section 523 amended by enacting subsec. (1.2), 2011, c. 16, s. 2(1)

### **When direct indictment is preferred charging same offence**

(1.2) When an accused, in respect of an offence with which the accused is charged, has not been taken into custody or is being detained or has been released from custody under or by virtue of any provision of this Part and after the order for interim release or detention has been made, or the appearance notice, promise to appear, summons, undertaking or recognizance has been issued, given or entered into, and an indictment is preferred under section 577 charging the same offence or an included offence, the order for interim release or detention of

**the accused and the appearance notice, promise to appear, summons, undertaking or recognizance, if any, applies in respect of the indictment.**

2. Section 523 amended by replacing the portion of subsec. (2) before para. (a), 2011, c. 16, s. 2(2)

#### **Order vacating previous order for release or detention**

##### **(2) Despite subsections (1) to (1.2),**

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### **Section 551.1**

Section 551.1 enacted, 2011, c. 16, s. 4

#### **PART XVIII.1 CASE MANAGEMENT JUDGE**

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##### **APPOINTMENT / Conference or hearing / Timing of application or appointment / Same judge.**

**551.1 (1) On application by the prosecutor or the accused or on his or her own motion, the Chief Justice or the Chief Judge of the court before which a trial is to be or is being held or the judge that the Chief Justice or the Chief Judge designates may, if he or she is of the opinion that it is necessary for the proper administration of justice, appoint a judge as the case management judge for that trial at any time before the jury selection, if the trial is before a judge and jury, or before the stage at which the evidence on the merits is presented, if the trial is being heard by a judge without a jury or a provincial court judge.**

**(2) The Chief Justice or the Chief Judge or his or her designate may order that a conference between the prosecutor and the accused or counsel for the accused or a hearing be held for the purpose of deciding if it is necessary for the proper administration of justice to proceed with the appointment.**

**(3) In the case of a trial for an indictable offence, other than a trial before a provincial court judge, the application or appointment may only be made after the prosecution prefers the indictment.**

**(4) The appointment of a judge as the case management judge does not prevent him or her from becoming the judge who hears the evidence on the merits.**

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### **Section 551.2**

Section 551.2 enacted, 2011, c. 16, s. 4

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#### **ROLE.**

**551.2 The case management judge shall assist in promoting a fair and efficient trial, including by ensuring that the evidence on the merits is presented, to the extent possible, without interruption.**

## Section 551.3

Section 551.3 enacted, 2011, c. 16, s. 4

### POWERS BEFORE EVIDENCE ON MERITS PRESENTED / Hearing / Power exercised at trial / Decision binding.

551.3 (1) In performing his or her duties before the stage of the presentation of the evidence on the merits, the case management judge, as a trial judge, may exercise the powers that a trial judge has before that stage, including

- (a) assisting the parties to identify the witnesses to be heard, taking into account the witnesses' needs and circumstances;
- (b) encouraging the parties to make admissions and reach agreements;
- (c) encouraging the parties to consider any other matters that would promote a fair and efficient trial;
- (d) establishing schedules and imposing deadlines on the parties;
- (e) hearing guilty pleas and imposing sentences;
- (f) assisting the parties to identify the issues that are to be dealt with at the stage at which the evidence on the merits is presented; and
- (g) subject to section 551.7, adjudicating any issues that can be decided before that stage, including those related to
  - (i) the disclosure of evidence,
  - (ii) the admissibility of evidence,
  - (iii) the *Canadian Charter of Rights and Freedoms*,
  - (iv) expert witnesses,
  - (v) the severance of counts, and
  - (vi) the separation of trials on one or more counts when there is more than one accused.

(2) The case management judge shall order that a hearing be held for the purpose of exercising the power referred to in paragraph (1)(g).

(3) When the case management judge exercises the power referred to in paragraph (1)(g), he or she is doing so at trial.

(4) A decision that results from the exercise of the power referred to in paragraph (1)(g) is binding on the parties for the remainder of the trial — even if the judge who hears the evidence on the merits is not the same as the case management judge — unless the court is satisfied that it would not be in the interests of justice because, among other considerations, fresh evidence has been adduced.

## Section 551.4

Section 551.4 enacted, 2011, c. 16, s. 4

## **INFORMATION RELEVANT TO PRESENTATION OF EVIDENCE ON MERITS TO BE PART OF COURT RECORD / Exception.**

**551.4 (1)** When the case management judge is of the opinion that the measures to promote a fair and efficient trial that can be taken before the stage of the presentation of the evidence on the merits have been taken — including adjudicating the issues that can be decided — he or she shall ensure that the court record includes information that, in his or her opinion, may be relevant at the stage of the presentation of the evidence on the merits, including

- (a) the names of the witnesses to be heard that have been identified by the parties;
- (b) any admissions made and agreements reached by the parties;
- (c) the estimated time required to conclude the trial;
- (d) any orders and decisions; and
- (e) any issues identified by the parties that are to be dealt with at the stage of the presentation of the evidence on the merits.

**(2)** This section does not apply to a case management judge who also hears the evidence on the merits.

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## **Section 551.5**

Section 552.5 enacted, 2011, c. 16, s. 4

### **TRIAL CONTINUOUS.**

**551.5** Even if the judge who hears the evidence on the merits is not the same as the case management judge, the trial of an accused shall proceed continuously, subject to adjournment by the court.

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## **Section 551.6**

Section 551.6 enacted, 2011, c. 16, s. 4

### **ISSUES REFERRED TO CASE MANAGEMENT JUDGE / Powers at stage of presentation of evidence on merits.**

**551.6 (1)** During the presentation of the evidence on the merits, the case management judge shall adjudicate any issue referred to him or her by the judge hearing the evidence on the merits.

**(2)** For the purposes of adjudicating an issue, the case management judge may exercise the powers of a trial judge.

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## **Section 551.7**

Section 551.7 enacted, 2011, c. 16, s. 4

**DECISION WHETHER TO HOLD JOINT HEARING / Considerations / Order for joint hearing / Limitation — indictable offence / Order in court record and transmission to parties / Transmission of court record / Order to appear at joint hearing / Removal of prisoner / Powers of judge / Adjudication at trial / Decision in court records and return of documents.**

**551.7 (1)** If an issue referred to in any of subparagraphs 551.3(1)(g)(i) to (iii) is to be adjudicated in related trials that are to be or are being held in the same province before a court of the same jurisdiction, the Chief Justice or the Chief Judge of that court or his or her designate may, on application by the prosecutor or the accused or on his or her own motion, determine if it is in the interests of justice, including ensuring consistent decisions, to adjudicate that issue at a joint hearing for some or all of those trials.

**(2)** To make the determination, the Chief Justice or the Chief Judge or his or her designate

- (a) shall take into account, among other considerations, the degree to which the evidence relating to the issue is similar in the related trials; and
- (b) may order that a conference between the prosecutor and the accused or counsel for the accused or a hearing be held.

**(3)** If the Chief Justice or the Chief Judge or his or her designate determines that it is in the interests of justice to adjudicate the issue at a joint hearing for some or all of the related trials, he or she shall issue an order

- (a) declaring that a joint hearing be held to adjudicate the issue in the related trials that he or she specifies;
- (b) naming the parties who are to appear at the hearing;
- (c) appointing a judge to adjudicate the issue; and
- (d) designating the territorial division in which the hearing is to be held, if the trials are being held in different territorial divisions.

**(4)** However, the order may only be made in respect of a trial for an indictable offence, other than a trial before a provincial court judge, if the indictment has been preferred.

**(5)** The Chief Justice or the Chief Judge or his or her designate shall cause a copy of the order to be included in the court record of each of the trials specified in the order and to be provided to each of the parties named in it.

**(6)** If one of the specified trials is being held in a territorial division other than the one in which the joint hearing will be held, the officer in that territorial division who has custody of the indictment or information and the writings relating to the trial shall, when he or she receives the order, transmit the indictment or information and the writings without delay to the clerk of the court before which the joint hearing is to be held.

**(7)** The judge appointed under the order shall require the parties who are named in it to appear at the joint hearing.

**(8)** The order made under subsection (2) or (3) is sufficient warrant, justification and authority to all sheriffs, keepers of prisons and peace officers for an accused's removal, disposal and reception in accordance with the terms of the order, and the sheriff may appoint and authorize any peace officer to convey the

accused to a prison for the territorial division in which the hearing, as the case may be, is to be held.

(9) The judge appointed under the order may, as a trial judge and for the purpose of adjudicating the issue at the joint hearing, exercise the powers of a trial judge.

(10) When the judge adjudicates the issue, he or she is doing so at trial.

(11) Once the judge has adjudicated the issue, he or she shall cause his or her decision, with reasons, to be included in the court record of each of the related trials in respect of which the joint hearing was held and, in the case of a trial for which an indictment, information or writings were transmitted by an officer under subsection (6), the judge shall have the documents returned to the officer.

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## Section 553

Subparagraph 553(c)(xi) replaced, 2012, c. 1, s. 33

(xi) paragraph 5(3)(a.1) of the *Controlled Drugs and Substances Act*.

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## Section 591

Section 591 amended by enacting subsecs. (4.1) and (4.2), 2011, c. 16, s. 5

### Delayed enforcement / Decisions binding on parties

(4.1) The court may make an order under subsection (3) that takes effect either at a specified later date or on the occurrence of a specified event if, taking into account, among other considerations, the need to ensure consistent decisions, it is satisfied that it is in the interests of justice to do so.

(4.2) Unless the court is satisfied that it would not be in the interests of justice, the decisions relating to the disclosure or admissibility of evidence or the *Canadian Charter of Rights and Freedoms* that are made before any order issued under subsection (3) takes effect continue to bind the parties if the decisions are made — or could have been made — before the stage at which the evidence on the merits is presented.

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## Section 601

Subsection 601(1) replaced, 2011, c. 16, s. 6

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### AMENDING DEFECTIVE INDICTMENT OR COUNT

601. (1) An objection to an indictment preferred under this Part or to a count in an indictment, for a defect apparent on its face, shall be taken by motion to quash the indictment or count before the accused enters a plea, and, after the accused has entered a plea, only by leave of the court before which the proceedings take place. The court before which an objection is taken under this section may, if it

considers it necessary, order the indictment or count to be amended to cure the defect.

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## Section 631

1. Section 631 amended by enacting subsec. (2.2), 2011, c. 16, s. 7(1)

### Additional jurors

(2.2) If the judge considers it advisable in the interests of justice, he or she may order that 13 or 14 jurors, instead of 12, be sworn in accordance with this Part before the clerk of the court draws out the cards under subsection (3) or (3.1).

2. Subsections 631(3) and (3.1) replaced, 2011, c. 16, s. 7(2)

### Cards to be drawn by clerk of court / Exception

(3) If the array of jurors is not challenged or the array of jurors is challenged but the judge does not direct a new panel to be returned, the clerk of the court shall, in open court, draw out one after another the cards referred to in subsection (1), call out the number on each card as it is drawn and confirm with the person who responds that he or she is the person whose name appears on the card drawn, until the number of persons who have answered is, in the opinion of the judge, sufficient to provide a full jury and any alternate jurors ordered by the judge after allowing for orders to excuse, challenges and directions to stand by.

(3.1) The court, or a judge of the court, before which the jury trial is to be held may, if the court or judge is satisfied that it is necessary for the proper administration of justice, order the clerk of the court to call out the name and the number on each card.

3. Subsection 631(5) replaced, 2011, c. 16, s. 7(3)

### Drawing additional cards if necessary

(5) If the number of persons who answer under subsection (3) or (3.1) is not sufficient to provide a full jury and the number of alternate jurors ordered by the judge, the clerk of the court shall proceed in accordance with subsections (3), (3.1) and (4) until 12 jurors — or 13 or 14 jurors, as the case may be, if the judge makes an order under subsection (2.2) — and any alternate jurors are sworn.

4. Subsection 631(6) replaced, 2011, c. 16, s. 7(4)

### Ban on publication, limitation to access or use of information

(6) On application by the prosecutor or on its own motion, the court or judge before which a jury trial is to be held may, if the court or judge is satisfied that such an order is necessary for the proper administration of justice, make an order

- (a) directing that the identity of a juror or any information that could disclose their identity shall not be published in any document or broadcast or transmitted in any way; or

(b) limiting access to or the use of that information.

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## Section 634

Section 634 amended by enacting subsec. (2.01), 2011, c. 16, s. 8

### If 13 or 14 jurors

(2.01) If the judge orders under subsection 631(2.2) that 13 or 14 jurors be sworn in accordance with this Part, the total number of peremptory challenges that the prosecutor and the accused are each entitled to is increased by one in the case of 13 jurors or two in the case of 14 jurors.

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## Section 640

Subsection 640(2.2) replaced, 2011, c. 16, s. 9

### Exclusion order

(2.2) If an order is made under subsection (2.1), two unsworn jurors, who are then exempt from the order, or two persons present who are appointed by the court for that purpose, shall be sworn to determine whether the ground of challenge is true. Those persons so appointed shall exercise their duties until 12 jurors — or 13 or 14 jurors, as the case may be, if the judge makes an order under subsection 631(2.2) — and any alternate jurors are sworn.

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## Section 641

Section 641 replaced, 2011, c. 16, s. 10

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### CALLING PERSONS WHO HAVE STOOD BY / Other persons becoming available.

641. (1) If a full jury and any alternate jurors have not been sworn and no cards remain to be drawn, the persons who have been directed to stand by shall be called again in the order in which their cards were drawn and shall be sworn, unless excused by the judge or challenged by the accused or the prosecutor.

(2) If, before a person is sworn as a juror under subsection (1), other persons in the panel become available, the prosecutor may require the cards of those persons to be put into and drawn from the box in accordance with section 631, and those persons shall be challenged, directed to stand by, excused or sworn, as the case may be, before the persons who were originally directed to stand by are called again.

## **Section 642.1**

Subsection 642.1(1) replaced, 2011, c. 16, s. 11

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### **SUBSTITUTION OF ALTERNATE JURORS**

**642.1 (1)** Alternate jurors shall attend at the commencement of the presentation of the evidence on the merits and, if there is not a full jury present, shall replace any absent juror, in the order in which their cards were drawn under subsection 631(3).

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## **Section 643**

Subsection 643(1) replaced, 2011, c. 16, s. 12

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### **WHO SHALL BE THE JURY**

**643. (1)** The 12, 13 or 14 jurors who are sworn in accordance with this Part and present at the commencement of the presentation of the evidence on the merits shall be the jury to hear the evidence on the merits.

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## **Section 652.1**

Section 652.1 enacted, 2011, c. 16, s. 13

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### **TRYING OF ISSUES OF INDICTMENT BY JURY / Reduction of number of jurors to 12.**

**652.1 (1)** After the charge to the jury, the jury shall retire to try the issues of the indictment.

**(2)** However, if there are more than 12 jurors remaining, the judge shall identify the 12 jurors who are to retire to consider the verdict by having the number of each juror written on a card that is of equal size, by causing the cards to be placed together in a box that is to be thoroughly shaken together and by drawing one card if 13 jurors remain or two cards if 14 jurors remain. The judge shall then discharge any juror whose number is drawn.

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## **Section 653.1**

Section 653.1 enacted, 2011, c. 16, s. 14

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### **MISTRIAL — RULINGS BINDING AT NEW TRIAL.**

**653.1** In the case of a mistrial, unless the court is satisfied that it would not be in the interests of justice, rulings relating to the disclosure or admissibility of evidence or the *Canadian Charter of Rights and Freedoms* that were made during

the trial are binding on the parties in any new trial if the rulings are made — or could have been made — before the stage at which the evidence on the merits is presented.

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## Section 667

Paragraph 667(1)(a) replaced, 2012, c. 1, s. 200

- (a) a certificate setting out with reasonable particularity the conviction or discharge under section 730, the finding of guilt under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, the finding of guilt under the *Youth Criminal Justice Act* or the conviction and sentence or finding of guilt and sentence in Canada of an offender is, on proof that the accused or defendant is the offender referred to in the certificate, evidence that the accused or defendant was so convicted, so discharged or so convicted and sentenced or found guilty and sentenced, without proof of the signature or the official character of the person appearing to have signed the certificate, if it is signed by
- (i) the person who made the conviction, order for the discharge or finding of guilt,
  - (ii) the clerk of the court in which the conviction, order for the discharge or finding of guilt was made, or
  - (iii) a fingerprint examiner;

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## Section 669.2

Subsections 669.2(3) and (4) replaced, 2011, c. 16, s. 15

**If no adjudication made / If no adjudication made — jury trials**

**(3) Subject to subsections (4) and (5), if the trial was commenced but no adjudication was made or verdict rendered, the judge, provincial court judge, justice or other person before whom the proceedings are continued shall, without further election by an accused, commence the trial again as if no evidence on the merits had been taken.**

**(4) If a trial that is before a court composed of a judge and a jury was commenced but no adjudication was made or verdict rendered, the judge before whom the proceedings are continued may, without further election by an accused, continue the trial or commence the trial again as if no evidence on the merits had been taken.**

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## Section 672.35

Paragraph 672.35(c) replaced, 2012, c. 1, s. 145

- (c) the National Parole Board or any provincial parole board may take the verdict into account in considering an application by the accused for

parole or for a record suspension under the *Criminal Records Act* in respect of any other offence.

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## Section 742.1

Section 742.1 replaced, 2012, c. 1, s. 34

### IMPOSING OF CONDITIONAL SENTENCE.

742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
- (b) the offence is not an offence punishable by a minimum term of imprisonment;
- (c) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 14 years or life;
- (d) the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more;
- (e) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that
  - (i) resulted in bodily harm,
  - (ii) involved the import, export, trafficking or production of drugs, or
  - (iii) involved the use of a weapon; and
- (f) the offence is not an offence, prosecuted by way of indictment, under any of the following provisions:
  - (i) section 144 (prison breach),
  - (ii) section 264 (criminal harassment),
  - (iii) section 271 (sexual assault),
  - (iv) section 279 (kidnapping),
  - (v) section 279.02 (trafficking in persons — material benefit),
  - (vi) section 281 (abduction of person under fourteen),
  - (vii) section 333.1 (motor vehicle theft),
  - (viii) paragraph 334(a) (theft over \$5000),
  - (ix) paragraph 348(1)(e) (breaking and entering a place other than a dwelling-house),
  - (x) section 349 (being unlawfully in a dwelling-house), and
  - (xi) section 435 (arson for fraudulent purpose).

## Section 750

Subsection 750(4) replaced, 2012, c. 1, s. 146

## **Application for restoration of privileges**

**(4) A person to whom subsection (3) applies may, at any time before a record suspension for which he or she has applied is ordered under the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.**

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## **Section 752**

Subparagraph (b)(x) of the definition "designated offence" replaced, 2012, c. 1, s. 35

- (ix.1) section 172.2 (agreement or arrangement — sexual offence against child),
  - (x) subsection 212(1) (procuring),
  - (x.1) subsection 212(2) (living on avails of prostitution of person under eighteen),
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## **Section 753.1**

Paragraph 753.1(2)(a) replaced, 2012, c. 1, s. 36

- (a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), 163.1(3) (distribution, etc., of child pornography), 163.1(4) (possession of child pornography) or 163.1(4.1) (accessing child pornography), section 170 (parent or guardian procuring sexual activity), 171 (householder permitting sexual activity), 171.1 (making sexually explicit material available to child), 172.1 (luring a child) or 172.2 (agreement or arrangement — sexual offence against child), subsection 173(2) (exposure), 212(2) (living on the avails of prostitution of person under eighteen), 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years) or 212(4) (offence — prostitution of person under eighteen) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and
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## **Section 753.2**

Subsection 753.2(3) replaced, 2012, c. 1, s. 147

### **Application for reduction in period of long-term supervision**

**(3) An offender who is required to be supervised, a member of the National Parole Board or, on approval of that Board, the offender's parole supervisor, as defined in subsection 99(1) of the *Corrections and Conditional Release Act*, may apply to a superior court of criminal jurisdiction for an order reducing the period of long-term**

supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending and thereby being a danger to the community. The onus of proving that ground is on the applicant.

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## Section 795

Section 795 replaced, 2011, c. 16, s. 16

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### APPLICATION OF PARTS XVI, XVIII, XVIII.1, XX AND XX.1.

**795.** The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice, and the provisions of Parts XVIII.1, XX and XX.1, in so far as they are not inconsistent with this Part, apply, with any necessary modifications, to proceedings under this Part.

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## Section 810.1

1. Subsection 810.1(1) amended by replacing, 2012, c. 1, s. 37(1)

- (a) "151, 152, 155" with "151 or 152, subsection 153(1), section 155";
- (b) "171 or 172.1" with "171, 171.1, 172.1 or 172.2";
- (c) "173(2)" with "173(2) or 212(1), (2), (2.1) or (4)"; and
- (d) "272 or 273" with "272, 273, 280 or 281".

2. Paragraph 810.1(3.02)(a) replaced, 2012, c. 1, s. 37(2)

- (a) prohibit the defendant from having any contact — including communicating by any means — with a person under the age of 16 years, unless the defendant does so under the supervision of a person whom the judge considers appropriate;
- (a.1) prohibit the defendant from using the Internet or other digital network, unless the defendant does so in accordance with conditions set by the judge;

## Form 5.04

Subparagraph (b)(iii) replaced, 2012, c. 1, s. 38

[ ] (iii) an offence under any of sections 145 to 148, subsection 160(3), sections 170, 171.1, 173, 252, 264, 264.1, 266 and 270, paragraph 348(1)(e) and sections 349 and 423 of the *Criminal Code*,

## Terminology Changes

In the following provisions, "National Parole Board" is replaced by "Parole Board of Canada", 2012, c. 1, s. 160(c):

- (c) in the *Criminal Code*,
- (i) subparagraph (b)(xi) of the definition "justice system participant" in section 2,
  - (ii) paragraph 672.35(c),
  - (iii) paragraphs 746.1(2)(c) and (3)(c),
  - (iv) subsection 753.2(3), and
  - (v) subsections 761(1) and (2);

## OFFENCE GRID

1. Please note that, for s. 246 listed in the Offence Grid, in the column for "Conditional Sentence", there should be an "" (not a "✓").

2. The following changes should be made to the Offence Grid:

173(1) Indecent acts	Summary	6mth 5000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	P
173(2) Exposing genitals to person under 16	Hyb-Ind. Hyb-Sum.	2 yrs 6 mth./ 5000*	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

## FORMS OF CHARGES

The following Forms of Charges should be added:

### s. 333.1 Motor Vehicle Theft

A.B. on . . . . . at . . . . . did steal a motor vehicle [*specify the vehicle e.g. by licence plate number*] the property of C.D. and did thereby commit theft contrary to s. 333.1 of the *Criminal Code of Canada*. [Editor's note: we advise specifying the section number so that the accused is aware that he or she is not charged under the general theft section in s. 334]

### s. 353.1 Tampering with Vehicle Identification Number

A.B. on . . . . . at . . . . . did without lawful excuse alter [*or remove or obliterate*] a vehicle identification number on a motor vehicle [*specify the vehicle e.g. by licence plate number*] contrary etc.

### s. 402.2(1) Identity Theft

A.B. on . . . . . at . . . . . did knowingly obtain [*or possess*] C.D.'s identity information [*specify information e.g. American Express credit card number (see definition in s. 402.1)*] in circumstances giving rise to a reasonable inference that

the information was intended to be used to commit the indictable offence of [specify offence e.g. theft of credit cards] contrary etc.

**s. 402.2(2) Trafficking in Identity Information**

A.B. on ..... at ..... did transmit [or make available or distribute or sell or offer for sale] C.D.'s identity information [specify information e.g. American Express credit card number (see definition in s. 402.1)] knowing that or being reckless as to whether the information would be used to commit the indictable offence of [specify offence e.g. theft of credit cards] contrary etc.

*or*

A.B. on ..... at ..... did have in his possession for the purpose of transmitting [or making available or distributing or selling or offering for sale] C.D.'s identity information [specify information e.g. American Express credit card number (see definition in s. 402.1)] knowing that or being reckless as to whether the information would be used to commit the indictable offence of [specify offence e.g. theft of credit cards] contrary etc.

**403 Identity Fraud**

A.B. on ..... at ..... did fraudulently personate C.D.

(a) with intent to gain advantage for himself [or E.F.] to wit ..... contrary etc.

*or*

(b) with intent to obtain certain [or an interest in] property to wit ..... contrary etc.

*or*

(c) with intent to cause disadvantage to C.D. [or E.F.] contrary etc.

*or*

(d) with intent to avoid arrest [or prosecution or obstruct, prevent or defeat the course of justice] contrary etc.

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## CONTROLLED DRUGS AND SUBSTANCES ACT

Amended 2012, c. 1, ss. 39 to 46; to come into force by order of the Governor in Council

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### Section 5

1. Paragraph 5(3)(a) replaced, 2012, c. 1, s. 39(1)

- (a) subject to paragraph (a.1), if the subject matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life, and
- (i) to a minimum punishment of imprisonment for a term of one year if
- (A) the person committed the offence for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1(1) of the *Criminal Code*,

- (B) the person used or threatened to use violence in committing the offence,
  - (C) the person carried, used or threatened to use a weapon in committing the offence, or
  - (D) the person was convicted of a designated substance offence, or had served a term of imprisonment for a designated substance offence, within the previous 10 years, or
- (ii) to a minimum punishment of imprisonment for a term of two years if
    - (A) the person committed the offence in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years,
    - (B) the person committed the offence in a prison, as defined in section 2 of the *Criminal Code*, or on its grounds, or
    - (C) the person used the services of a person under the age of 18 years, or involved such a person, in committing the offence;
- (a.1) if the subject matter of the offence is a substance included in Schedule II in an amount that is not more than the amount set out for that substance in Schedule VII, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years less a day;

2. Subsections 5(4) to (6) replaced, 2012, c. 1, s. 39(2)

#### Interpretation

(5) For the purposes of applying subsection (3) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III or IV includes a reference to any substance represented or held out to be a substance included in that Schedule.

#### Interpretation

(6) For the purposes of paragraph (3)(a.1) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

## Section 6

Paragraph 6(3)(a) replaced, 2012, c. 1, s. 40

- (a) if the subject matter of the offence is a substance included in Schedule I in an amount that is not more than one kilogram, or in Schedule II, is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment for a term of one year if
  - (i) the offence is committed for the purposes of trafficking,
  - (ii) the person, while committing the offence, abused a position of trust or authority, or
  - (iii) the person had access to an area that is restricted to authorized persons and used that access to commit the offence;

- (a.1) if the subject matter of the offence is a substance included in Schedule I in an amount that is more than one kilogram, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of two years;

## Section 7

1. Paragraphs 7(2)(a) and (b) replaced, 2012, c. 1, s. 41(1)

- (a) if the subject matter of the offence is a substance included in Schedule I, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of three years if any of the factors set out in subsection (3) apply and for a term of two years in any other case;
- (a.1) if the subject matter of the offence is a substance included in Schedule II, other than cannabis (marijuana), is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment
- (i) for a term of one year if the production is for the purpose of trafficking, or
  - (ii) for a term of 18 months if the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply;
- (b) if the subject matter of the offence is cannabis (marijuana), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, and to a minimum punishment of
- (i) imprisonment for a term of six months if the number of plants produced is less than 201 and more than five, and the production is for the purpose of trafficking,
  - (ii) imprisonment for a term of nine months if the number of plants produced is less than 201 and more than five, the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply,
  - (iii) imprisonment for a term of one year if the number of plants produced is more than 200 and less than 501,
  - (iv) imprisonment for a term of 18 months if the number of plants produced is more than 200 and less than 501 and any of the factors set out in subsection (3) apply,
  - (v) imprisonment for a term of two years if the number of plants produced is more than 500, or
  - (vi) imprisonment for a term of three years if the number of plants produced is more than 500 and any of the factors set out in subsection (3) apply;

2. Section 7 amended by enacting subsec. (3), 2012, c. 1, s. 41(2)

### Factors

(3) The following factors must be taken into account in applying paragraphs (2)(a) to (b):

- (a) the person used real property that belongs to a third party in committing the offence;

- (b) the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;
- (c) the production constituted a potential public safety hazard in a residential area; or
- (d) the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or in the immediate area, or permitted such a trap, device or other thing to remain or be placed in that location or area.

## Sections 8 and 9

Sections 8 and 9 re-enacted, 2012, c. 1, s. 42

### NOTICE

#### NOTICE.

8. The court is not required to impose a minimum punishment unless it is satisfied that the offender, before entering a plea, was notified of the possible imposition of a minimum punishment for the offence in question and of the Attorney General's intention to prove any factors in relation to the offence that would lead to the imposition of a minimum punishment.

### REPORT TO PARLIAMENT

#### REVIEW / Report.

9. (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act, including a cost-benefit analysis of mandatory minimum sentences, shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

(2) The committee referred to in subsection (1) shall, within one year after a review is undertaken under that subsection, submit a report to Parliament including a statement of any changes that the committee recommends.

## Section 10

1. The portion of subsec. 10(2) before para. (a) replaced, 2012, c. 1, s. 43(1)

#### Factors to take into consideration

(2) If a person is convicted of a designated substance offence for which the court is not required to impose a minimum punishment, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

2. Subsections (4) and (5) enacted, 2012, c. 1, s. 43(2)

Drug treatment court program

(4) A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

- (a) to participate in a drug treatment court program approved by the Attorney General; or
- (b) to attend a treatment program under subsection 720(2) of the *Criminal Code*.

Minimum punishment

(5) If the offender successfully completes a program under subsection (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.

## Schedule 1

Schedule I amended by enacting items 19, 20 and 21, 2012, c. 1, s. 44

19. Amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues including:
- (1) amphetamine (a-methylbenzene-ethanamine)
  - (2) N-ethylamphetamine (N-ethyl-a-methylbenzeneethanamine)
  - (3) 4-methyl-2,5-dimethoxyamphetamine (STP) (2,5-dimethoxy-4,a-dimethylbenzeneethanamine)
  - (4) 3,4-methylenedioxyamphetamine (MDA) (a-methyl-1,3-benzodioxole-5-ethanamine)
  - (5) 2,5-dimethoxyamphetamine (2,5-dimethoxy-a-methylbenzene-ethanamine)
  - (6) 4-methoxyamphetamine (4-methoxy-a-methylbenzeneethanamine)
  - (7) 2,4,5-trimethoxyamphetamine (2,4,5-trimethoxy-a-methylbenzeneethanamine)
  - (8) N-methyl-3,4-methylenedioxy- amphetamine (N,a-dimethyl-1,3-benzodioxole-5-ethanamine)
  - (9) 4-ethoxy-2,5-dimethoxyamphetamine (4-ethoxy-2,5-dimethoxy-a-methylbenzeneethanamine)
  - (10) 5-methoxy-3,4-methylenedioxy- amphetamine (7-methoxy-a-methyl-1,3-benzodioxole-5-ethanamine)
  - (11) N,N-dimethyl-3,4-methylenedioxyamphetamine (N,N, a-trimethyl-1,3-benzodioxole-5-ethanamine)
  - (12) N-ethyl-3,4-methylenedioxyamphetamine (N-ethyl-a-methyl-1,3-benzodioxole-5-ethanamine)
  - (13) 4-ethyl-2,5-dimethoxyamphetamine (DOET) (4-ethyl-2,5-dimethoxy-a-methylbenzeneethanamine)
  - (14) 4-bromo-2,5-dimethoxyamphetamine (4-bromo-2,5-dimethoxy-a-methylbenzeneethanamine)
  - (15) 4-chloro-2,5-dimethoxyamphetamine (4-chloro-2,5-dimethoxy-a-methylbenzeneethanamine)

- (16) 4-ethoxyamphetamine (4-ethoxy-a-methylbenzene-ethanamine)
  - (17) Benzphetamine (N-benzyl-N,a-dimethylbenzene-ethanamine)
  - (18) N-Propyl-3,4-methylenedioxy-amphetamine (a-methyl-N-propyl-1,3-benzodioxole-5-ethanamine)
  - (19) N-(2-Hydroxyethyl)-a-methylbenzene-ethanamine
  - (20) N-hydroxy-3,4-methylenedioxy- amphetamine (N-[a-methyl-3,4-(methylenedioxy)phenethyl]hydroxylamine)
  - (21) 3,4,5-trimethoxyamphetamine (3,4,5-trimethoxy-a-methylbenzeneethanamine)
20. Flunitrazepam (5-(o-fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one) and any of its salts or derivatives
21. 4-hydroxybutanoic acid (GHB) and any of its salts
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### Schedule III

- 1. Item 1 of Schedule III repealed, 2012, c. 1, s. 45.
  - 1. [Repealed. 2012, c. 1, s. 45.]
  - 2. Items 25 and 26 of Schedule III repealed, 2012, c. 1, s. 46.
  - 25. [Repealed. 2012, c. 1, s. 46.]
  - 26. [Repealed. 2012, c. 1, s. 46.]
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## YOUTH CRIMINAL JUSTICE ACT

Amended 2012, c. 1, ss. 156 to 159, 160(l), 167 to 188(2), 189, 190, and 192 to 194; ss. 156 to 159 in force on Royal Assent, March 13, 2012; remainder to come into force by order of the Governor in Council

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### Section 2

- 1. The definition "presumptive offence" in subsec. 2(1) repealed, 2012, c. 1, s. 167(1).
- 2. The definition "serious violent offence" in subsec. 2(1) replaced, 2012, c. 1, s. 167(2)

"serious violent offence"

"serious violent offence" means an offence under one of the following provisions of the *Criminal Code*:

- (a) section 231 or 235 (first degree murder or second degree murder);
- (b) section 239 (attempt to commit murder);
- (c) section 232, 234 or 236 (manslaughter); or
- (d) section 273 (aggravated sexual assault).

3. Subsection 2(1) amended by adding the following in alphabetical order, 2012, c. 1, s. 167(3)

"serious offence"

"serious offence" means an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more.

"violent offence"

"violent offence" means

- (a) an offence committed by a young person that includes as an element the causing of bodily harm;
  - (b) an attempt or a threat to commit an offence referred to in paragraph (a); or
  - (c) an offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.
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## Section 3

1. Paragraph 3(1)(a) replaced, 2012, c. 1, s. 168(1)

- (a) the youth criminal justice system is intended to protect the public by
  - (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
  - (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and
  - (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

2. The portion of para. 3(1)(b) before subpara. (i) replaced, 2012, c. 1, s. 168(2)

- (b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:
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## Section 29

Subsection 29(2) replaced, 2012, c. 1, s. 169

Justification for detention in custody

(2) A youth justice court judge or a justice may order that a young person be detained in custody only if

- (a) the young person has been charged with
  - (i) a serious offence, or
  - (ii) an offence other than a serious offence, if they have a history that indicates a pattern of either outstanding charges or findings of guilt;
- (b) the judge or justice is satisfied, on a balance of probabilities,

- (i) that there is a substantial likelihood that, before being dealt with according to law, the young person will not appear in court when required by law to do so;
  - (ii) that detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances, including a substantial likelihood that the young person will, if released from custody, commit a serious offence, or
  - (iii) in the case where the young person has been charged with a serious offence and detention is not justified under subparagraph (i) or (ii), that there are exceptional circumstances that warrant detention and that detention is necessary to maintain confidence in the administration of justice, having regard to the principles set out in section 3 and to all the circumstances, including
    - (A) the apparent strength of the prosecution's case,
    - (B) the gravity of the offence,
    - (C) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
    - (D) the fact that the young person is liable, on being found guilty, for a potentially lengthy custodial sentence; and
- (c) the judge or justice is satisfied, on a balance of probabilities, that no condition or combination of conditions of release would, depending on the justification on which the judge or justice relies under paragraph (b),
- (i) reduce, to a level below substantial, the likelihood that the young person would not appear in court when required by law to do so;
  - (ii) offer adequate protection to the public from the risk that the young person might otherwise present, or
  - (iii) maintain confidence in the administration of justice.

#### Onus

(3) The onus of satisfying the youth justice court judge or the justice as to the matters referred to in subsection (2) is on the Attorney General.

## Section 32

Subsection 32(1) amended by adding "and" at the end of para. (b), by striking out "and" at the end of para. (c) and by repealing para. (d), 2012, c. 1, s. 170.

## Section 37

Subsection 37(4) replaced, 2012, c. 1, s. 171

#### Appeals heard together

(4) An order under subsection 72(1) or (1.1) (adult or youth sentence), 75(2) (lifting of ban on publication) or 76(1) (placement when subject to adult sentence) may be appealed as part of the sentence and, unless the court to which the appeal is taken

otherwise orders, if more than one of these is appealed they must be part of the same appeal proceeding.

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## Section 38

Subsection 38(2) amended by striking out "and" at the end of para. (d), by adding "and" at the end of para. (e) and by adding the following after para. (e), 2012, c. 1, s. 172

- (f) subject to paragraph (c), the sentence may have the following objectives:
- (i) to denounce unlawful conduct, and
  - (ii) to deter the young person from committing offences.
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## Section 39

Paragraph 39(1)(c) replaced, 2012, c. 1, s. 173

- (c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or of both under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985; or
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## Section 42

1. Paragraph 42(2)(o) replaced, 2012, c. 174(1)

- (o) in the case of an offence set out in section 239 (attempt to commit murder), 232, 234 or 236 (manslaughter) or 273 (aggravated sexual assault) of the *Criminal Code*, make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

2. Paragraph 42(5)(a) replaced, 2012, c. 1, s. 174(2)

- (a) the young person is found guilty of an offence other than one in the commission of which a young person causes or attempts to cause serious bodily harm; and

3. Subparagraphs 42(7)(a)(i) and (ii) replaced, 2012, c. 1, s. 174(3)

- (i) the young person has been found guilty of a serious violent offence, or
- (ii) the young person has been found guilty of an offence, in the commission of which the young person caused or attempted to cause serious bodily harm and for which an adult is liable to imprisonment for a term of more

than two years, and the young person had previously been found guilty at least twice of such an offence;

4. Subsections 42(9) and (10) repealed, 2012, c. 1, s. 174(4).

## Sections 61 to 63

Sections 61 to 63 repealed, 2012, c. 1, s. 175:

61. [*Repealed.* 2012, c. 1, s. 175.]
62. [*Repealed.* 2012, c. 1, s. 175.]
63. [*Repealed.* 2012, c. 1, s. 175.]

## Section 64

1. Subsections 64(1) and (2) replaced, 2012, c. 1, s. 176(1)

### APPLICATION BY ATTORNEY GENERAL / Obligation / Order fixing age / Notice of intention to seek adult sentence.

64. (1) The Attorney General may, before evidence is called as to sentence or, if no evidence is called, before submissions are made as to sentence, make an application to the youth justice court for an order that a young person is liable to an adult sentence if the young person is or has been found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years and that was committed after the young person attained the age of 14 years.

(1.1) The Attorney General must consider whether it would be appropriate to make an application under subsection (1) if the offence is a serious violent offence and was committed after the young person attained the age of 14 years. If, in those circumstances, the Attorney General decides not to make an application, the Attorney General shall advise the youth justice court before the young person enters a plea or with leave of the court before the commencement of the trial.

(1.2) The lieutenant governor in council of a province may by order fix an age greater than 14 years but not greater than 16 years for the purpose of subsection (1.1).

(2) If the Attorney General intends to seek an adult sentence for an offence by making an application under subsection (1), the Attorney General shall, before the young person enters a plea or with leave of the youth justice court before the commencement of the trial, give notice to the young person and the youth justice court of the intention to seek an adult sentence.

2. Subsections 64(4) and (5) repealed, 2012, c. 1, s. 176(2)

- (4) [*Repealed.* 2012, c. 1, s. 176(2).]
- (5) [*Repealed.* 2012, c. 1, s. 176(2).]

## **Sections 65 and 66**

Sections 65 and 66 repealed, 2012, c. 1, s. 177

65. [*Repealed.* 2012, c. 1, s. 177.]

66. [*Repealed.* 2012, c. 1, s. 177.]

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## **Section 67**

1. The portion of subsec. 67(1) before para. (b) replaced, 2012, c. 1, s. 178(1)

Election — adult sentence

67. (1) The youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (2) if

2. The portion of subsec. 67(3) before para. (b) replaced, 2012, c. 1, s. 178(2)

Election — Nunavut

(3) In respect of proceedings in Nunavut, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (4) if

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## **Section 68**

Section 68 repealed, 2012, c. 1, s. 179

68. [*Repealed.* 2012, c. 1, s. 179.]

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## **Section 69**

1. Subsection 69(1) repealed, 2012, c. 1, s. 180(1)

69(1) [*Repealed.* 2012, c. 1, s. 180(1).]

2. Subsection 69(2) replaced, 2012, c. 1, s. 180(2)

Included offences

(2) If the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence and the young person is found guilty of an included offence for which an adult is liable to imprisonment for a term of more than two years, committed after he or she has attained the age of 14 years, the Attorney General may make an application under subsection 64(1) (application for adult sentence).

## **Section 70**

Section 70 repealed, 2012, c. 1, 181

70. [*Repealed*. 2012, c. 1, s. 181.]

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## **Section 71**

Section 71 replaced, 2012, c. 1, s. 182

Hearing — adult sentences

71. The youth justice court shall, at the commencement of the sentencing hearing, hold a hearing in respect of an application under subsection 64(1) (application for adult sentence), unless the court has received notice that the application is not opposed. Both parties and the parents of the young person shall be given an opportunity to be heard at the hearing.

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## **Section 72**

1. Subsections 72(1) to (3) replaced, 2012, c. 1, s. 183(1)

**ORDER OF ADULT SENTENCE / Order of youth sentence / Onus / Pre-sentence report.**

72. (1) The youth justice court shall order that an adult sentence be imposed if it is satisfied that

- (a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and
- (b) a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not be of sufficient length to hold the young person accountable for his or her offending behaviour.

(1.1) If the youth justice court is not satisfied that an order should be made under subsection (1), it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed.

(2) The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is on the Attorney General.

(3) In making an order under subsection (1) or (1.1), the youth justice court shall consider the pre-sentence report.

2. Subsection 72(5) replaced, 2012, c. 1, s. 183(2)

**Appeal**

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) or (1.1) is part of the sentence.

## **Section 73**

Section 73 replaced, 2012, c. 1, s. 184

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**COURT MUST IMPOSE ADULT SENTENCE / Court must impose youth sentence.**

73. (1) When the youth justice court makes an order under subsection 72(1) in respect of a young person, the court shall, on a finding of guilt, impose an adult sentence on the young person.

(2) When the youth justice court makes an order under subsection 72(1.1) in respect of a young person, the court shall, on a finding of guilt, impose a youth sentence on the young person.

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## **Section 75**

Section 75 replaced, 2012, c. 1, s. 185

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**DECISION REGARDING LIFTING OF PUBLICATION BAN / Order / Onus / Appeals.**

75. (1) When the youth justice court imposes a youth sentence on a young person who has been found guilty of a violent offence, the court shall decide whether it is appropriate to make an order lifting the ban on publication of information that would identify the young person as having been dealt with under this Act as referred to in subsection 110(1).

(2) A youth justice court may order a lifting of the ban on publication if the court determines, taking into account the purpose and principles set out in sections 3 and 38, that the young person poses a significant risk of committing another violent offence and the lifting of the ban is necessary to protect the public against that risk.

(3) The onus of satisfying the youth justice court as to the appropriateness of lifting the ban is on the Attorney General.

(4) For the purposes of an appeal in accordance with section 37, an order under subsection (2) is part of the sentence.

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## **Section 76**

Subsection 76(2) replaced, 2012, c. 1, s. 186

**Young person under age of 18**

(2) No young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.

## Section 81

Section 81 replaced, 2012, c. 1, s. 187

### PROCEDURE FOR APPLICATION OR NOTICE.

81. An application or a notice to the court under section 64 or 76 must be made or given orally, in the presence of the other party, or in writing with a copy served personally on the other party.

## Section 82

1. Paragraph 82(1)(b) replaced, 2012, c. 1, s. 188(1)

(b) a youth justice court may consider the finding of guilt in considering an application under subsection 64(1) (application for adult sentence);

2. Paragraph 82(1)(d) replaced, 2012, c. 1, s. 156

(d) the National Parole Board or any provincial parole board may consider the finding of guilt in considering an application for conditional release or for a record suspension under the *Criminal Records Act*.

3. Paragraph 82(4)(a) repealed, 2012, c. 1, s. 188(2)

(4) [Repealed. 2012, c. 1, s. 188(2).]

## Section 110

Paragraph 110(2)(b) replaced, 2012, c. 1, s. 189

(b) in a case where the information relates to a young person who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under subsection 75(2); and

## Section 115

Section 115 amended by enacting subsec. (1.1), 2012, c. 1, s. 190

### Extrajudicial measures

(1.1) The police force shall keep a record of any extrajudicial measures that they use to deal with young persons.

## Section 119

Subparagraph 119(1)(n)(iii) replaced, 2012, c. 1, s. 157





